TRIBAL PROVISIONS OF THE LEAHY-CRAPO VAWA REAUTHORIZATION BILL

Rates of domestic violence against Native women in Indian country are now among the highest in the United States. The Leahy-Crapo VAWA reauthorization bill directly confronts this epidemic.

Federal law-enforcement resources are often hours away from reservations and stretched thin. And Federal law does not provide the tools needed to address domestic violence in Indian country.

Tribal police, prosecutors, and courts have, however, had significant successes in combating crimes of domestic violence committed by Indians in Indian country. But without an act of Congress, tribes cannot prosecute a non-Indian, even if he lives on the reservation and is married to a tribal member. With non-Indians constituting more than 76% of the overall population living on reservations and other Indian lands, interracial dating and marriage are common. Too often, non-Indian men who batter their Indian wives or girlfriends go unpunished. Predictably, the violence escalates.

The U.S. Department of Justice studied this crisis, worked with Federal prosecutors and the FBI, consulted with tribal leaders and victims’ advocates, and recommended new Federal legislation to better protect Native women. The Senate Indian Affairs Committee held extensive hearings on the issue. The Leahy-Crapo VAWA bill adopts the Justice Department’s recommendations.

The Leahy-Crapo bill provides tribes with the authority to hold domestic-violence perpetrators accountable for their crimes against Native women—regardless of the perpetrator’s race.

Under the Leahy-Crapo bill’s tribal-jurisdiction provisions:

- Tribes could prosecute non-Indians only for domestic violence, dating violence, and violations of protection orders. Crimes between two strangers, or between two non-Indians, or between persons with no ties to the tribe, would not be covered.
- Tribes could sentence perpetrators, Indian or non-Indian, for up to 3 years per offense.
- Federal- and state-court jurisdiction over domestic violence would be unaffected.
- Defendants would effectively have the same rights in tribal court as in state court, including due-process rights and an indigent defendant’s right to free appointed counsel meeting Federal constitutional standards.
- Defendants could protect their rights by appealing their convictions to a tribal court and filing habeas petitions in Federal court.

The Leahy-Crapo bill also would deter more dangerous crimes of domestic violence against Native women by authorizing Federal prosecutors to seek, against Indian or non-Indian defendants:

- 5-year sentences for assaults resulting in substantial bodily injuries; and
- 10-year sentences for assaults by strangling or suffocating.